

REMARKS

This Application has been carefully reviewed in light of the final Office Action mailed May 12, 2003. At the time of the Office Action, Claims 1-44 were pending in this patent application. The Examiner rejects Claims 1-44. Applicant respectfully requests reconsideration and favorable action in this case.

Interview Summary

Applicant's attorney, Mr. Chad D. Terrell, conducted a telephonic interview with Examiner Wang and Supervisory Patent Examiner Winder on July 14, 2003. Pursuant to M.P.E.P. § 713.04, Applicant submits this summary of the telephonic interview to record Applicant's understanding of the substance of the interview. If Applicant's understanding is inaccurate, notice of such is appreciated.

Attorney for Applicant thanks the Examiner for the courtesy of his telephonic interview. During the telephonic interview, Applicant traversed the Examiner's rejections under 35 U.S.C. § 103(a). With respect to independent Claim 1, Applicant discussed the *Joseph* and *Gignac* references and the *Joseph-Gignac* combination. Applicant discussed the reasons why *Joseph* teaches away from certain limitations in Applicant's claims and reasons why combining *Gignac* (according to the Examiner's proposed interpretation of *Gignac*) with *Joseph* renders *Joseph* inoperable for its intended purpose. Although no agreement was reached, the Examiner agreed to consider Applicant's arguments, articulated in this Response to Final, with respect to the rejections.

Consideration of Information Disclosure Statements

Applicant submitted Information Disclosure Statements dated August 30, 2000 and November 12, 2001, which the Examiner has failed to consider entirely. Both IDSs were filed before the mailing of a first Office Action on the merits. With respect to the IDS submitted on November 12, 2001, the Examiner has failed to initial the "T" reference on page 2 of 3. Pursuant to M.P.E.P. § 609, Applicant respectfully requests the Examiner to consider all of the art cited in the IDSs dated August 30, 2000 and November 12, 2001, and in the event a patent issues on this Application, that this art be printed on the face of the issued patent. Furthermore, Applicant respectfully requests a copy of the PTO Form-1449 for the

IDSs indicating the Examiner's consideration of the references. For the convenience of the Examiner, a copy of the IDS submitted on November 12, 2001, and the "T" reference on page 2 of 3 of which the Examiner failed to indicate consideration are attached.

Section 103 Rejections

The Examiner rejects Claims 1, 6-7, 10-11, and 17-20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,878,401, issued to Joseph ("*Joseph*") in view of Gignac, "Descartes tracks inventory through cyberspace" ("*Gignac*"). Applicant respectfully requests reconsideration of this rejection of Claims 1, 6-7, 10-11, and 17-20 for the following reasons. First, Applicant maintains that *Joseph* teaches away from certain limitations recited in Claim 1. Second, Applicant maintains that the proposed combination of *Gignac* with *Joseph* would render *Joseph* inoperable for its intended purpose. Third, Applicant maintains that the Examiner has not shown the required suggestion or motivation to combine the cited references. Fourth, Applicant maintains that *Gignac* fails to make up for the acknowledged deficiencies of *Joseph*. Each of these arguments is addressed below.

A. *Joseph* Teaches Away from Certain Limitations in Applicant's Claims.

First, *Joseph* teaches away from¹ at least the following limitations recited in Claim 1:

- an inventory database storing product availability data comprising information about *products on the order bank, products being produced, products in-transit to distribution facilities, and products at the distribution facilities*; and
- a locate server process operable to receive the search request message from the locate client process and further *operable to search the product availability data in the inventory database for products matching and substantially matching the product configuration data*, the locate server operable to generate a search reply message containing the matching products and return the search reply message to the locate client process.

¹ A prior art reference must be considered in its entirety, including disclosures that teach away from the claimed invention. See M.P.E.P. §§ 2141.02 and 2145(X)(D); see also *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Joseph begins by discussing the problem it is trying to solve. For example, *Joseph* states:

One common problem that is faced by retail stores, especially those such as shoe stores, in which over 500 shoe and sneaker styles may be on display at any given time, is ensuring that all items that are on display *are in the store's inventory*. If displayed items *are not in inventory*, customer dissatisfaction and loss of sales may result. Normally, if a desired shoe style is out of inventory, the customer will either (i) return to the displays and *select another style, which may itself be out of inventory*, or (ii) go to a different store, each of which results in customer dissatisfaction. Accordingly, it would be desirable to have a system that, once a sales person determines from a sales computer that a selected style of shoe *is out of stock*, enables the customer to select from *alternative styles of shoes similar to those originally selected by the customer*, and to view the shoes on the sales computer, *without the necessity of returning to the store display*.

(Column 1, Lines 15-31; emphasis added).

Furthermore, in discussing problems with prior art systems – problems which *Joseph* is apparently directed at remedying – *Joseph* discloses that in a shoe store, for example, when a style is selected by a customer in a particular size, the selected pair of shoes is retrieved from a stockroom so that the customer may try the shoes on. (Column 1, Lines 41-44). According to *Joseph*, the productivity of the stockroom personnel is critical in maintaining customer satisfaction in that “*if a customer must wait too long for the desired shoes to be retrieved, the customer may leave.*” (Column 1, Lines 48-51; emphasis added). *Joseph's* solution to the above-identified problem is, “If [a requested] item is unavailable, means is provided for determining alternative items for the requested item and for determining whether the alternative items are available. The *available alternative items* are interactively displayed for the customer.” (Column 1, Line 65 through Column 2, Line 3). For example, *Joseph* teaches that “if a selected size of a selected style of shoe is out of stock, an Alternative Sneaker Selection System is activated.” (Column 4, Lines 45-46). *Joseph*, therefore, is clearly limited to retail-based searching to find the selected style and size of a particular shoe or alternative shoe that the store *has in stock* (i.e., that is available).

Returning now to the elements of Claim 1, if *Joseph* considers “returning to the shoe display” or “waiting for shoes to be retrieved from the stockroom” as causing a customer to wait too long (resulting in customer dissatisfaction), then *Joseph* certainly does not motivate one of ordinary skill in the art to use a “locate server process” that searches “product availability data comprising information about products on the order bank, products being

produced, products in-transit to distribution facilities, and products at the distribution facilities.” Under the parameters set forth by *Joseph*, such a system would also cause a customer to wait “too long” and, as a result, the customer would still likely leave the store – the whole problem *Joseph* is attempting to solve by providing alternative shoes that are in stock. Thus, *Joseph* teaches away from, at a minimum, the following limitations of Claim 1:

- an inventory database storing product availability data comprising information about *products on the order bank, products being produced, products in-transit to distribution facilities, and products at the distribution facilities*; and
- a locate server process operable to receive the search request message from the locate client process and further *operable to search the product availability data in the inventory database for products matching and substantially matching the product configuration data*, the locate server operable to generate a search reply message containing the matching products and return the search reply message to the locate client process.

B. The Proposed Joseph-Gignac Combination Would Render Joseph Inoperable for its Intended Purpose.

Second, the Examiner acknowledges that “*Joseph* fails to teach storing product availability data comprising information about products on the order bank, products being produced, products in-transit to distribution facilities, and products at the distribution facilities.” (Office Action, page 3). However, the Examiner argues that the proposed *Joseph-Gignac* combination does teach this limitation. (Office Action, Page 3). Applicant respectfully traverses the Examiner's position. Even assuming that *Gignac* teaches the above-identified limitation (an assertion by the Examiner with which Applicant in no way agrees), modifying *Joseph* by combining it with *Gignac* (under these assumptions) would render *Joseph* inoperable for its intended purpose.²

² If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. See M.P.E.P. § 2143.01; see also *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984).

As described above, *Joseph* is limited to either finding a customer a desired shoe in a desired size and style *in inventory*, or finding the customer *an alternative shoe in inventory*, so that the customer does not have to “wait too long” and does not leave the store. (See Column 1, Lines 50-51 and Column 4, Lines 42-46). Thus, if *Joseph* is combined with the concept of searching for the desired product in “product availability data comprising information about products on the order bank, products being produced, products in-transit to distribution facilities, and products at the distribution facilities,” a customer will have to “wait too long” and may leave the store, defeating the intended purpose stated in *Joseph*. *Joseph* even describes that requiring a customer to return to the sales floor or to wait while items are inefficiently retrieved from the stock room would cause the customer to wait too long. Certainly, waiting for a product that is “on the order bank,” “being produced,” “in-transit to distribution facilities,” or “at the distribution facilities” would cause the customer to wait too long and would render *Joseph* inoperable for its intended purpose -- which is to provide a customer with an alternative shoe that is in stock for a selected shoe that is out of stock, such that the customer does not have to wait too long.

C. Required Suggestion or Motivation to Combine Not Shown

Third, Applicant maintains that the Examiner has not shown the required suggestion or motivation in the references or in the knowledge generally available to one of ordinary skill in the art at the time of the invention to combine or modify the cited references. In reply to Applicant's similar argument in the previous Response, the Examiner argues that the following statement satisfies this requirement:

A person with ordinary skill in the art would have been motivated to make the modification to *Joseph* because the teachings of *Gignac* provides an inventory database for storing product availability data from a variety of distribution chain nodes would enable merchants to provide users with comprehensive product availability data. Also, providing users with comprehensive product availability data would enable users to make an informed purchasing decision with respect to the desired delivery date.

(Office Action, page 15).

Applicant respectfully submits that the Examiner has not shown the required motivation in *Joseph*, *Gignac*, or in the knowledge generally available to one of ordinary skill

in the art at the time of the invention, to combine or modify the cited references. This is particularly true in light of the portions of *Joseph* which teach away from Claim 1 as set forth above. The Examiner is apparently arguing that the motivation is in the knowledge generally available to one of ordinary skill in the art at the time of the invention. Because nothing in *Joseph*, *Gignac*, nor any other cited reference suggests or motivates the proposed combination or modification, the Examiner has not provided evidence that suggests the proposed combination or modification. Merely stating that it would have been obvious to one of ordinary skill in the art is not enough. Because “common knowledge” or “well known” art is being relied on to combine the references, Applicant respectfully requests that a reference be provided in support of this position pursuant to M.P.E.P. § 2144.03. If personal knowledge is being relied on to supply the required motivation or suggestion to combine, Applicant respectfully requests that an affidavit supporting such facts be provided pursuant to M.P.E.P. § 2144.03. Furthermore, Applicant reiterates the additional legal standards provided in the previous Response.

D. *Gignac* Fails to Make Up for the Acknowledged Deficiencies of *Joseph*

Fourth, even assuming for the sake of argument that there is a suggestion or motivation to combine *Joseph* with *Gignac*, *Gignac* still would not disclose the acknowledged deficiencies of *Joseph*. For example, neither *Gignac* nor *Joseph* teaches, suggests, or discloses “an inventory database storing product availability data comprising information about products on the order bank, products being produced, products in-transit to distribution facilities, and products at the distribution facilities,” as recited in part in Claim 1. *Gignac* merely teaches an “inventory management” system “for VARs, distributors, and manufacturers to track products as they move through the channel.” (*Gignac*, Page 1). The system “proactively monitors an order, identifies whether suppliers are shipping in time, and what the status of the customer’s order is as it moves from the supplier to the distributor to the VAR to be configured for a customer.” (*Gignac*, Page 1). The objective of the *Gignac* system is to decrease time lags. For example, *Gignac* states that “if the goods arrive before the data tells you its there, well that's self defeating isn't it?” (*Gignac*, Page 1). As such, *Gignac* is limited to an *inventory* management system for the monitoring of orders and those items already produced as they move from the supplier to the distributor in the supply chain. Accordingly, *Gignac*, at a minimum, fails to teach, suggest, or disclose “an inventory

database storing product availability data comprising information comprising products *on the order bank, products being produced*, products in-transit to distribution facilities, and products at the distribution facilities,” as recited in part in Claim 1.

For at least the reasons given above, Applicant respectfully requests reconsideration and allowance of Claim 1, together with all Claims that depend on Claim 1. For at least the reasons stated above with regard to Claim 1, Applicant respectfully requests reconsideration and allowance of independent Claims 10 and 24, together with all claims that depend on Claims 10 and 24.

The Examiner rejects Claims 2, 8-9, 12, and 15 under 35 U.S.C. § 103(a) as being unpatentable over *Joseph* in views of *Gignac* in further view of U.S. Patent Number 6,167,448 issued to Hemphill et al. (“*Hemphill*”). The Examiner rejects Claims 3, 5, and 13-14 under 35 U.S.C. § 103(a) as being unpatentable over *Joseph* in view of *Gignac* in further view of U.S. Patent Number 6,341,282 issued to Sharpe et al. (“*Sharpe*”). The Examiner rejects Claims 16 and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over *Joseph* in view of *Gignac* and in further view of *Sharpe* and Auto-By-Tel (<http://www.autobytel.com>, 12/12/1997) (“*Auto-By-Tel*”). Claims 2-3, 5, and 8-9 (which depend from Claim 1) and Claims 12-16 and 21-23 (which depend from Claim 10) depend from allowable independent claims and are allowable for at least this reason. In addition, Claims 2-3, 5, 8-9, 12-16, and 21-23 recite further patentable distinctions over the prior art of record. To avoid burdening the record and in view of the clear allowability of Claims 1 and 10, Applicant does not specifically discuss in this Response the patentable distinctions of Claims 2-3, 5, 8-9, 12-16, and 21-23. However, Applicant reserves the right to discuss these distinctions in a future Response. For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claims 2-3, 5, 8-9, 12-16, and 21-23.

The Examiner rejects Claims 24-37 under 35 U.S.C. § 103(a) for reasons similar to those discussed above with regard to Claims 10-23. The Examiner also rejects Claims 38-44 because they encompass the same scope of the invention as that of Claims 24-37. Applicant notes that Applicant does not necessarily agree with the Examiner's characterization of Claims 38-44. For at least the reasons stated with regard to Claim 1, Applicant respectfully

requests reconsideration and allowance of Claims 24 and 38, together with all Claims that depend from Claims 24 and 38.

CONCLUSION

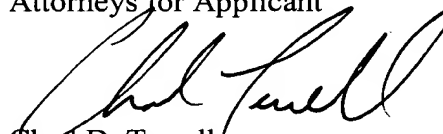
Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

If there are matters that can be discussed by telephone to further the prosecution of this Application, Applicant invites the Examiner to call the undersigned attorney listed below at the Examiner's convenience.

Although Applicant believes that no fee is due, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



Chad D. Terrell
Reg. No. 52,279

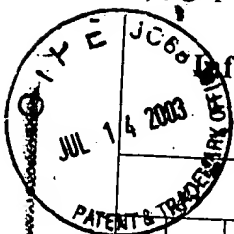
Date: July 14, 2003

CORRESPONDENCE ADDRESS:

Baker Botts L.L.P.
2001 Ross Avenue, Suite 600
Dallas, Texas 75201-2980
Phone: (214) 953.6813
Fax: (214) 661-4813

Enclosures: Pages 1-3 PTO 1449 form and
Article listed under T on page 2 of 3 herewith.

NOV 23 2001



Information Disclosure Citation In an Application

Application No.
09/539,392Applicant(s)
Stephen SmithDocket Number
066762.0117Group Art Unit
2756
2155Filing Date
March 31, 2000

U.S. PATENT DOCUMENTS

		DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
fw	A	5,757,917	05/26/98	Rose et al.	380	25	11/01/95
fw	B	5,765,139	06/09/98	Bondy	705	8	04/03/96
fw	C	5,774,873	06/30/98	Berent et al.	705	26	03/29/96
fw	D	5,794,219	08/11/98	Brown	705	37	02/20/96
fw	E	5,802,497	09/01/98	Manasse	705	27	07/10/95
fw	F	5,809,479	09/15/98	Martin et al.	705	11	02/03/97
fw	G	5,826,241	10/20/98	Stein et al.	705	26	09/16/94
fw	H	5,839,112	11/17/98	Schreitmueller et al.	705	4	12/28/94
fw	I	5,890,137	03/30/99	Koreeda	705	26	07/26/96
fw	J	5,890,138	03/30/99	Godin et al.	705	26	08/26/96
fw	K	5,895,454	04/20/99	Harrington	705	26	04/17/97
fw	L	5,897,622	04/27/99	Blinn et al.	705	26	10/16/96

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		DOCUMENT NO.	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION
	M						YES NO
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JUL 21 2003

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		DOCUMENT (Including Author, Title, Source, and Pertinent Pages)	DATE
fw	O	U.S. Patent Application Serial No. 09/532,833 entitled <i>Method of Conducting Online Competitive Price Quoting Events</i> , filed March 21, 2000, 60 pages.	03/21/00
fw	P	U.S. Patent Application Serial No. 09/561,644 entitled <i>Method and System for Configuring and Ordering Consumer Product</i> , filed May 2, 2000, 31 pages.	05/02/00
fw	Q	U.S. Patent Application Serial No. 09/538,516 entitled <i>Communication Schema of Online System and Method of Status Inquiry and Tracking Related to Orders for Consumer Product Having Specific Configurations</i> , filed March 29, 2000, 122 pages.	03/29/00
fw	R	U.S. Patent Application Serial No. 09/537,190 entitled <i>Online System and Method of Status Inquiry and Tracking Related to Orders for Consumer Product Having Specific Configurations</i> , filed March 29, 2000, 118 pages.	03/29/00
fw	S	U.S. Patent Application Serial No. 09/542,413 entitled <i>Online System and Method of Reporting Related to Orders for Consumer Product Having Specific Configurations</i> , filed April 1, 2000, 119 pages.	04/01/00
fw	T	U.S. Patent Application Serial No. 09/542,637 entitled <i>Communication Schema of Online System and Method of Ordering Consumer Product Having Specific Configurations</i> , filed April 4, 2000, 122 pages.	04/04/00

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10-1449

Application No.
09/539,392Applicant(s)
Stephen SmithDocket Number
066762.0117Group Art Unit
2756
2455Filing Date
March 31, 2000Information Disclosure Citation
In an Application

U.S. PATENT DOCUMENTS

PATENT & TRADEMARK		U.S. PATENT DOCUMENTS					
		DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
lu	A	5,899,980	05/04/99	Wilf et al.	705	26	08/11/97
fu	B	5,905,974	05/18/99	Fraser et al.	705	37	12/13/96
fu	C	5,905,975	05/18/99	Ausubel	705	37	01/02/97
lu	D	5,960,408	9/28/99	Martin et al.	705	11	08/20/98
lu	E	5,960,411	9/28/99	Hartman et al.	705	26	09/12/97
lu	F	5,970,472	10/19/99	Allsop et al.	705	26	05/13/97
lu	G	5,970,475	10/19/99	Barnes et al.	705	27	10/10/97
lu	H	5,983,199	11/09/99	Kaneko	705	26	06/30/97
lu	I	6,009,413	12/28/99	Webber et al.	705	26	11/17/97
lu	J	6,012,045	01/04/200	Barzilai et al.	705	37	07/01/97

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	DOCUMENT NO.	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION NO
K		NOV 28 2001				
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	DOCUMENT (Including Author, Title, Source, and Pertinent Pages)	DATE
lu	M U.S. Patent Application Serial No. 09/543,833 entitled <i>Communication Schema of Online Reporting System and Method Related to Online Orders for Consumer Products Having Specific Configurations</i> , filed April 5, 2000, 118 pages.	04/05/00
fu	N U.S. Patent Application Serial No. 09/543,686 entitled <i>Online System and Method of Ordering and Specifying Consumer Product Having Specific Configurations</i> , April 5, 2000, 119 pages.	04/05/00
fu	O U.S. Patent Application Serial No. 09/543,860 entitled <i>Communication Schema of Online System and Method of Locating Consumer Product in the Enterprise Production Pipeline</i> , filed April 5, 2000, 135 pages.	04/05/00
lu	P MSN CarPoint web page at http://carpoint.msn.com/newcar/default.asp?src=home New-Car buying service, ©2000, 5 pages.	2000
lu	Q AT Kearney, "Creating Supply Advantage SM ," Computer-Aided Sourcing System, CAS ³ Auction Discussion at Ford, March 19, 1999, 19 pages.	03/19/99
lu	R FREEMARKETS ONLINE®, Online Industrial Market Making Brochure, date unknown, pp. 1-12.	Unknown
lu	S Timothy Aeppel, "Bidding for E-Nuts and E-Bolts On the Net," Reprinted from <i>The Wall Street Journal</i> , March 12, 1999, 2 pages.	03/12/99
lu	T Glen Meakem, "How Bazaar," <i>CIO WebBusiness</i> , Section Two, August 1, 1998, 5 pages.	08/01/98

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U.S. PATENT AND TRADEMARK OFFICE

TO-1449

Application No.

09/539,392

Applicant(s)

Stephen Smith

Docket Number

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March 31, 2000

Information Disclosure Citation
In an Application

U.S. PATENT DOCUMENTS

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FOREIGN PATENT DOCUMENTS

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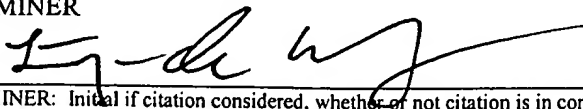
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DATE

sw	E	FreeMarkets, <i>Publicity</i> , <http://www.freemarkets.com/scripts/publicity.asp>, date unknown, 10 pages.	Unknown
sw	F	"The \$300 Billion Stealth Economy," <i>Inc. Technology</i> 1998, No. 3, reprinted with permission of <i>Inc. magazine</i> , copyright 1998, <i>Goldhirsh Group, Inc.</i> , 4 pages.	1998
sw	G	Scott Woolley, "E-muscle," <i>Technology Web Solver</i> , undated, reprinted by permission of <i>FORBES magazine</i> , March 9, 1998 Issue, © 1998, <i>FORBES Inc.</i> , 1 page.	03/09/98
sw	H	Clinton Wilder, "Electronic Purchasing - What's Your Bid," <i>Informationweek</i> , November 10, 1997, 4 pages.	11/10/97
sw	I	Robert D. Hof, "the Buyer Always Wins," <i>BusinessWeek</i> , undated, reprinted from <i>Business Week</i> , March 22, 1999 copyright by <i>The McGraw-Hill Companies, Inc.</i> , 2 pages	03/22/99
sw	J	UBid.com Help Pages, <wysiwyg://8/http://www.ubid.com/help/auctions.asp>, date unknown, 11 pages.	Unknown
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sw	M	Marex.com web page, <http://www.marex.com/about/about.asp>, date unknown, 2 page.	Unknown
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sw	O	MetalSite web page, <http://www.MetalSite.com/>, <i>MetalSite, L.P.</i> , copyright 1999, 8 pages.	1999
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sw	Q	eBay™ web page, <wysiwyg://19/http://www.ebay.com/index.html>, <i>eBay, Inc.</i> , copyright 1995-2000, 26 pages.	1995-2000
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